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Constitutional Law--Conscientious Objectors

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The Supreme Court's concern with the constitutional rights of an accused in the back room of the police station is obviously legitimate. Roscoe Pound recognized in 1934 the problem caused by incommunicado grilling and suggested the solution achieved in *Escobedo* regarding right to counsel. He also submitted that there should be an express provision for a legal examination of suspected of accused persons before a magistrate as well as a provision for taking down evidence so as to guarantee accuracy. 24 J. CRIM. L. & C. 1014, 1017 (1934). If these safeguards are to be incorporated in police investigatory methods, they apparently will get there through judicial determination of constitutional rights of the accused. Whether *Dufour* is a proper extension of *Escobedo* and whether the right to counsel becomes operative only upon request are only two of many determinations which should be reached in delineating the proper balance between the accuser and the accused.

Lester Clay Hess, Jr.

Constitutional Law—Conscientious Objectors

Daniel Andrew Seeger, Arno Sascha Jakobson and Forrest Britt Peter were convicted of refusing to submit to induction into the armed forces as required by federal law. 50 U.S.C. § 456 (j) (1958). This law exempts from military service persons who by reason of religious training and belief are conscientiously opposed to any participation in war. The act defines religious training and belief as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal code."

The defendants expressed varied beliefs. Seeger stated that his belief was a "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." He did not, however, disavow a belief in relation to a Supreme Being. Jakobson said that he believed in a "Supreme Being" who was the "Creator of Man" in the sense of being "ultimately responsible for the existence of" and who was "the Supreme Reality" of which "[T]he existence of man is the result." Peter stated that the source of his conviction was "our democratic American culture

with its values derived from the western culture and philosophical tradition." He supposed "[Y]ou could call that a belief in a Supreme Being or God."

The Court held that all of these beliefs fell within the purview of the act. In so doing, the Court established that the test of belief in relation to a Supreme Being is "whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." *United States v. Seeger*, 85 Sup. Ct. 850 (1965).

By its decision, the Court appears to have stripped the cloak of narrow construction from the interpretation of a Supreme Being to embrace the expanding concepts of modern religion. In doing so, the Court avoided the defendants' contentions that the section does not exempt nonreligious conscientious objectors and, as a result, it discriminates between different forms of religious expression in violation of the first amendment's establishment and free exercise clauses and the due process clause of the fifth amendment.

The Court, however, in sidestepping the constitutional issue, undertook to define a Supreme Being. Mr. Justice Clark posed this question, "Does the term 'Supreme Being' . . . mean the orthodox God or the broader concept of a power or being, or a faith 'to which all else is subordinate or upon which all else is ultimately dependent'?" He concluded that the test of belief must be a belief that is parallel to that of one who clearly qualifies for the exemption. *United States v. Seeger*, *supra* at 854.

The necessity of exempting certain classes of citizens from military service first came to be recognized on the federal level during the Civil War. 12 Stat. 731 (1863). Prior to that time, the states were left to cope with this problem. The Civil War Act provided for the exemption of a conscientious objector if he could either procure a substitute or pay a 300 dollars penalty. 12 Stat. 733 (1863). The conscientious objector was allowed non-combatant service if he could establish his membership in a "well-organized religious sect" which was opposed to war, and if he could prove his individual opposition to military combat.

The Selective Service Act of World War II dropped the test of association and assumed a test based upon the individual's religious

training and belief. 54 Stat. 889 (1940). This test met with varied application by the courts. *Berman v. United States*, 156 F.2d 377 (9th Cir. 1964), held that the test did not encompass broad philosophical or sociological beliefs. The Court relied on a dictum from the dissent of Mr. Chief Justice Hughes in *United States v. Macintosh*, 283 U.S. 605, 633 (1931), where he stated that "The essence of religion is belief in relation to God involving duties superior to those arising from any human relation."

In 1948, Congress amended the language of the statute and declared that "religious training and belief" is "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation but [not including] essentially political, sociological, or philosophical views or a merely personal moral code." 50 U.S.C. § 456 (1958). This clause is essentially the dictum of Mr. Chief Justice Hughes in the *Macintosh* case, with the exception of the term "Supreme Being" substituted for the term "God."

To some, the test appeared to become more definitive and stringent with the addition of the term "Supreme Being." However, the effect was exactly the opposite. *Torcaso v. Watkins*, 367 U.S. 488 (1961), held invalid under the free exercise clause of the first amendment a requirement by the Maryland Constitution that a notary public declare his belief in the existence of God as part of his oath of office. The Court stated that the test oath restricted the area of belief to "one particular sort of believer," thereby imposing on the free exercise of the faith of nonbelievers in violation of the free exercise clause. *Torcaso v. Watkins*, *supra* at 495. Thus, not only was a theistic belief repudiated as essential to religion within the meaning of the Constitution, but the Court also considered a belief in the existence of God as nonessential to a religious belief. As Mr. Justice Black stated, "[A]mong religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others." *Torcaso v. Watkins*, *supra* at 495, n. 11.

Before the instant case reached the Supreme Court, the defendant Seeger was found to be exempt on a claim that his objections to war were founded on religious belief and training, even though he refused to declare a belief in God. The court found that Seeger

had a faith based on ethical considerations in terms of "moral responsibility to search for a way to maintain the recognition of the dignity and worth of the individual, the faith in reason, freedom and individuality, and the opportunity to improve life for which democracy stands." *United States v. Seeger*, 326 F.2d 846 (2d Cir. 1964).

The *Torcaso* footnote of Mr. Justice Black and the *Seeger* case would thus appear to support the view that a belief in a system of ultimate moral values that bind the conscience is a form of religious belief within the meaning of the Constitution and that the grant of a statutory exemption designed to implement religious liberty must be broad enough to include such belief. KAUPER, RELIGION AND THE CONSTITUTION 30 (1964).

The interpretation by the Court in the instant case is consistent with the expanding congressional policy of equal treatment to those whose opposition to military combat is based upon religious beliefs. The test thus established does not require the local boards and courts to determine in what religion the registrant believes. The Court was quick to note that the fact that a religious belief is incomprehensible to the local boards and courts does not establish grounds for rejection under the law. The Court also stated that the real task is to determine whether the beliefs professed are sincerely held and whether they are religious in the registrant's own scheme of things. *United States v. Seeger*, *supra* at 863.

However, it is obvious that some complexity will be encountered in determining which type of conscientious objectors Congress intended the exemption to apply. As stated previously, the present law excludes essentially political, sociological or philosophical views, and a merely personal code.

No great difficulty is experienced with registrants who give political or sociological reasons for requesting exemption. These beliefs, even though they may be sincere, are not within the statutory exemption because they are not religious. In *Davidson v. United States*, 218 F.2d 609 (9th Cir. 1954), the court held that a registrant who denies the existence of a Supreme Being and states his allegiance to be directed toward humanity as a whole is not exempt.

The political objector requires a distinction from the conscientious objector. He may be variously classified. One type consists

of participants in an unorganized political movement seeking to outlaw conscription through their martyrdom. The other classification includes members of an organized group who seek to oppose the interests of government, such as the American Communist Party. 36 MINN. L. REV. 65, 75 (1951). There would be little question in this case as to their sincerity in their beliefs, but the element of religion would be negated when applied in the sense of a belief occupying a place in the life of a Communist parallel to that filled by the orthodox belief in God.

Perhaps the most difficult problem is that posed by the moral or ethical objectors. The views of this group which are usually voiced by a highly intelligent and literate registrant must be rejected as being the result of a religious training or belief. *Berman v. United States*, *supra* at 380, stated that the words "religious training and belief" were embodied in the 1940 statute "for the purpose of distinguishing between a conscientious social belief or a sincere devotion to a highly moralistic philosophy and one based on an individual's belief in his responsibility to an authority higher and beyond any worldly one" Congress indicated its preference to this view by substantially adopting this position in 1948. S. REP. NO. 1268 80th Cong. 2d Sess. 14 (1948).

The decision in the instant case opens the way to a definition of religion that transcends traditional theism and recognizes a wide variety of religious beliefs. The ruling also avoids an implication that a secular ideology must be characterized as religion. This seems to be consistent and in harmony with the settling principles more clearly emerging from the Court's interpretation and application of the first amendment freedoms.

Frank Cuomo

Criminal Law—Time Limitations in Initiating Habitual Criminal Proceedings

While confined in the penitentiary on an escape charge, *D* was sentenced to an additional ten-year period of confinement under a recidivist proceeding. The recidivist information had been filed at a time of a prior conviction for larceny and *D* had been convicted and sentenced under both. After completing the larceny sentence, but while *D* was still in the penitentiary under the escape